

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.12.101 and the adoption of New Rules I and II regarding water right combined appropriation) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

To: All Concerned Persons

1. On September 19, 2013, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than September 5, 2013, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-0581; fax (406) 444-0533; e-mail mheffner@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (12) remain the same.

(13) "Combined appropriation" means two or more wells or developed springs from the same source aquifer that are: ~~an appropriation of water from the same source aquifer by two or more groundwater developments, that are physically manifold into the same system.~~

(a) physically connected into a single system;

(b) located within 1,320 feet of one another and are on the same tract of record;

(c) within a subdivision as defined in 76-3-103, MCA, or land that is divided under 76-3-201 and 76-3-207, MCA, with 40 acres or less which may not exceed ten acre-feet per year, including any subsequent subdivision or division of land thereof; or

(d) within a subdivision as defined in 76-3-103, MCA, or land that is divided under 76-3-201 and 76-3-207, MCA, with more than 40 acres which may not exceed ten acre-feet per year for every 40 acres or 0.25 acre-foot per year for every additional acre over 40 acres in the subdivision or division of land, including any subsequent subdivision or division of land thereof.

(14) through (79) remain the same.

AUTH: 85-2-113, 85-2-306, MCA
IMP: 85-2-306, MCA

4. The rules as proposed to be adopted provide as follows:

NEW RULE I NOTICE OF COMPLETION (1) A notice of completion is correct and complete pursuant to 85-2-306(3)(b) and (c), MCA:

- (a) if it limits the total combined appropriation to the requirements under ARM 36.12.101(13) and is consistent with a pre-approval, if applicable; and
- (b) if it contains all the information on Form No. 602.

AUTH: 85-2-306, MCA
IMP: 85-2-306, MCA

NEW RULE II PRE-APPROVAL OF EXEMPT WELLS (1) A combined appropriation of two or more wells or developed springs from the same source aquifer does not need a permit if the total volume does not exceed ten-acre feet per year.

(2) A subdivision or division of land may seek pre-approval from the department to determine if the combined appropriation for all wells or developed springs serving the subdivision or division of land is within the requirements of (1) and ARM 36.12.101(13).

(3) The department shall make a determination on a pre-approval that a proposed plan for development is within the requirements of (1) and ARM 36.12.101(13) within 20 days.

AUTH: 85-2-306, MCA
IMP: 85-2-306, MCA

REASONABLE NECESSITY:

By order of the Montana First Judicial District Court, Lewis and Clark County, in CFC et al. v. DNRC, Cause No. BDV-2010-874, the department is required to define the term "combined appropriation" in 85-2-306, MCA, because no legislation was passed during the 2013 legislative session that defined the term. The amendments to ARM 36.12.101 and the adoption of New Rules I and II are reasonably necessary because the order requires that the definition be broader than, and not solely limited to: wells or developed springs that are physically manifold or connected together; and, that the department consider cumulative or collective impacts as a result of multiple, unconnected wells or developed springs that appropriate water from a single source aquifer and for a single project.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail

mheffner@mt.gov, and must be received no later than 5:00 p.m. on September 19, 2013.

6. David Vogler, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on July 19, 2013.

10. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the amendments and adoption of the above-referenced rules will significantly and directly impact small businesses.

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Anne Yates
ANNE YATES
Rule Reviewer

Certified to the Secretary of State on August 12, 2013.